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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,272

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Mauro Ajani

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23117

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05/24/2010

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EXAMINER

WHEELER, THURMAN MICHAEL

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,272	Applicant(s) AJANI ET AL.	
	Examiner Thurman Wheeler	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) 34-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 23-44 are pending in instant application

Election of Claims

1. Applicants' election of Group I, claims 23-33 in the reply filed on 16 April 2010 is acknowledged. Because Applicants' did not distinctly and specifically point the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP 818.03 (a)).

Claims 34-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected claims, there being no allowable generic or linking claim.

The requirement is still deemed proper and is therefore made FINAL.

Herein, claims 23-33 are for further prosecution.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 25, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

The language of a claim must make it clear what subject matter the claim encompasses to adequately delineate its "metes and bounds". See, e.g., the following decisions: In re Hammack, 427 F 2d. 1378, 1382, 166 USPQ 204, 208 (CCPA 1970); In re Venetian 530 F 2d. 956,958,189 USPQ 149,151 (CCPA 1976); In re Goffe, 526 F 2d. 1393, 1397, 188 USPQ 131, 135 (CCPA 1975); In re Watson, 51 7 F 2d. 465,477, 186 USPQ 11, 20 (CCPA 1975); In re Knowlton 481 F 2d. 1357, 1366, 178 USPQ 486, 492 (CCPA 1973). The courts have also indicated that before claimed subject matter can properly be compared to the prior art, it is essential to know what the claims do in fact cover. See, e.g., the following decisions: In re Steele, 305 F 2d. 859, 134 USPQ 292 (CCPA 1962); In re Moore 439 F 2d. 1232, 169 USPQ 236 (CCPA 1969); In re Merat, 51 9 F 2d. 1390, 186 USPQ 471 (CCPA 1975).

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Instant claims 23-33 are rejected under 35 U.S.C. 102(b) as anticipated by Kelm et al (US 20030203004).

Applicants' claimed invention is directed towards an oral pharmaceutical or dietary composition containing at least one short-chain fatty acid or salt, ester and/or amide thereof, in combination with a complex sugar and/or dietary fibre.

Kelm teaches an oral or dietary pharmaceutical composition comprising short and long chain fatty acids, wherein short chain fatty acid components are selected from the group consisting of acetic acid, propionic acid, butyric acid, esters thereof, salts thereof, and mixtures thereof [0012-0016]. Further, Kelm teaches that the ester chain of the selected acid may be a straight or branched chain of carbon atoms which is hydrolyzable in the

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presence of mammalian digestive enzymes, and typically contains from 1 to about 5 carbon atoms [0041].

Kelm teaches dosage forms may comprise from about 0.0001% to about 50% of the short chain fatty acid, by weight of the composition [0043]. Kelm teaches tablet or capsule forms comprise from about 1% to about 50% of the short chain fatty by weight of the composition [0044].

Kelm teaches compositions comprising short chain fatty acids mixed with fiber. Kelm teaches fibers that include complex carbohydrates, e.g. pectins [0091-0092]. Further, Kelm teaches a composite dietary fiber (e.g., citrus albedo fiber containing cellulose and pectin) [0094].

Kelm teaches a composition comprising fiber in a quantity from 0.001% to about 15%, preferably from about 0.01% to about 10%, more preferably from about 0.1% to about 10% [0095].

Kelm teaches the compositions comprise an enteric delivery system, preferably a small intestinal enteric delivery system, e.g. for delivery of the short chain fatty acids to the small intestine, the short chain fatty acids may be combined with a component having a pH of about 5.5 or greater, such that the short chain fatty acids bypass the stomach unabsorbed and are delivered specifically to areas of the small intestine. This may

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be particularly advantageous wherein the short chain fatty acid is the free acid, e.g. not an ester of acetic, propionic, or butyric acid. Further, Kelm teaches enteric delivery systems are commonly known [0105].

Therefore, claims 23-33 are anticipated by the teachings of Kelm (US 20030203004).

Conclusions

4. All claims are rejected.

5. Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thurman Wheeler whose telephone number is (571)270-1307. The examiner can normally be reached on Monday-Friday, 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tracy Vivlemore/
Primary Examiner, Art Unit 1635